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10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA  
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13 DOYLE WAYNE DAVIS,  
14 Plaintiff,  
15 v.  
16 DANIEL PARAMO, et al.,  
17 Defendants.

Case No.: 16-cv-689-WQH-LL

**ORDER**

18 HAYES, Judge:

19 The matter before the Court is the Motion for Voluntary Dismissal filed by Plaintiff  
20 Doyle Wayne Davis (ECF No. 140).

21 **I. BACKGROUND**

22 On March 21, 2016, Plaintiff Doyle Wayne Davis filed a Complaint against sixteen  
23 different defendants, alleging that medical staff at the Richard J. Donovan Correctional  
24 Facility provided substandard care to Plaintiff in retaliation for filing redress grievances.  
25 (ECF No. 1). Fourteen of the defendants have subsequently been dismissed on successful  
26 motions to dismiss. (ECF No. 78). On August 10, 2018, the remaining defendants, J. Silva  
27 and S. Pasha, filed a Motion for Summary Judgment. (ECF No. 137). Plaintiff did not file  
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1 opposition. On September 24, 2018, Plaintiff filed a Motion for Voluntary Dismissal.  
2 (ECF No. 140). On October 18, 2018, Defendants filed Opposition. (ECF No. 142).

## 3 **II. CONTENTIONS**

4 Plaintiff moves for voluntary dismissal of this action without prejudice. (ECF No.  
5 140). Plaintiff states that he “does not have the physical ability to respond to the current  
6 pending dispositive motion filed by the defendants in this matter.” *Id.* at 3. Plaintiff asserts  
7 that “after five heart surgeries and over 300 heart episodes” he cannot “physically do the  
8 work, the research, the battle that was required to get into the institution law library, while  
9 still fighting the inept medical care he was receiving. It is just physically impossible for  
10 plaintiff to do on his own.” *Id.* Plaintiff contends that the Court should dismiss this action  
11 in its entirety without prejudice “even though he is unable to respond to the pending motion  
12 to dismiss via Summary Judgment” because of Plaintiff’s “failing health and his physical  
13 inability to prosecute his legal action.” *Id.* at 4.

14 Defendants “do not oppose Plaintiff’s Motion to Dismiss . . . but contend the Court  
15 should dismiss the action with prejudice.” (ECF No. 142 at 1). Defendants assert that they  
16 have “spent substantial energy and expense in responding to Plaintiffs’ Complaint,  
17 discovery, discovery motions, and in preparing their Motion for Summary Judgment.” *Id.*  
18 at 3. Defendants assert that Plaintiff waited until after his opposition to Defendants’  
19 Motion for Summary Judgment was due to file his Motion for Voluntary Dismissal.  
20 Defendants contend that Plaintiff’s actions amount to “excessive delay” in prosecuting the  
21 action, and Plaintiff’s “explanation of physical inability after two years of intensive  
22 litigation is not a sufficient justification.” *Id.* Defendants contend that their pending  
23 Motion for Summary Judgment is likely to be granted, and dismissal with prejudice is  
24 warranted here. *Id.*

25 In the alternative, Defendants request that the Court award costs in the amount of  
26 \$969.60, as a condition of dismissing the action without prejudice. (ECF No. 142 at 4).  
27 Defendants assert that “[g]iven the facts and the indigent status of plaintiff, Defendants  
28 only seek recovery of their deposition costs and copying costs in preparing their summary

1 judgment motion.” *Id.* Defendants further request the Court impose the condition that “if  
2 Plaintiff fails to pay this amount in sixty days, the dismissal will become a dismissal with  
3 prejudice.” *Id.* at 4.

### 4 **III. LEGAL STANDARD**

5 Under Rule 41(a)(2), “an action may be dismissed at the plaintiff’s request only by  
6 court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). Dismissal  
7 is without prejudice unless the order states otherwise. *Id.* “The purpose of the rule is to  
8 permit a plaintiff to dismiss an action without prejudice so long as the defendant will not  
9 be prejudiced, or unfairly affected by dismissal.” *Stevedoring Servs. of Am. v. Armilla Int’l*  
10 *B.V.*, 889 F.2d 919, 921 (9th Cir. 1989) (internal citation omitted). Whether to grant a  
11 voluntary dismissal under Rule 41(a)(2) lies in the sound discretion of the district court.  
12 *See Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001).

13 “A district court should grant a motion for voluntary dismissal under Rule 41(a)(2)  
14 unless a defendant can show that it will suffer some plain legal prejudice as a result.”  
15 *Smith*, 263 F.3d at 975 (footnote omitted) (citing *Waller v. Fin. Corp. of Am.*, 828 F.2d  
16 579, 583 (9th Cir. 1987)). “[L]egal prejudice is just that—prejudice to some legal interest,  
17 some legal claim, some legal argument.” *Westlands Water Dist. v. United States*, 100 F.3d  
18 94, 97 (9th Cir. 1996). “[T]he expense incurred in defending against a lawsuit does not  
19 amount to legal prejudice.” *Id.* at 97. “The defendants’ interests can be protected by  
20 conditioning the dismissal without prejudice upon the payment of appropriate costs and  
21 attorney fees.” *Id.* “[I]f the district court decides it should condition dismissal on the  
22 payment of costs and attorney fees, the defendants should only be awarded . . . fees for  
23 work which cannot be used in any future litigation of these claims.” *Id.* (citing *Koch v.*  
24 *Hankins*, 8 F.3d 650, 652 (9th Cir. 1993)).

25 In determining whether to award costs to a defendant after a voluntary  
26 dismissal without prejudice, courts generally consider the following factors:  
27 (1) any excessive and duplicative expense of a second litigation; (2) the effort  
28 and expense incurred by a defendant in preparing for trial; (3) the extent to  
which the litigation has progressed; and (4) the plaintiff’s diligence in moving

1 to dismiss.

2 *Fraley v. Facebook, Inc.*, No. 11-CV-01726-LHK, 2012 WL 893152, at \*4 (N.D. Cal. Mar.  
3 13, 2012) (citation omitted).

4 **IV. DISCUSSION**

5 In this case, Defendants do not oppose voluntary dismissal of this action, and have  
6 not shown that Defendants would suffer any legal prejudice if Plaintiff's Motion for  
7 Voluntary Dismissal were granted without prejudice.

8 The Court has the authority to impose conditions on a voluntary dismissal without  
9 prejudice under Rule 41(a)(2), and turns next to the conditions requested by Defendants.  
10 Defendants request that a dismissal without prejudice is conditioned upon Plaintiff paying  
11 Defendants \$924.35 in deposition costs and \$45.25 in copying costs. With respect to  
12 deposition costs, Defendants have failed to establish that the requested costs are for work  
13 that would not be useful in any future litigation of these claims. *See Koch*, 8 F.3d at 652  
14 ("Only those costs incurred for the preparation of work product rendered useless by the  
15 dismissal should be awarded as a condition of the voluntary dismissal."). With respect to  
16 the \$45.25 in copying costs associated with Defendants' Motion for Summary Judgment,  
17 the Court finds that the copies of the Motion for Summary Judgment filed in this action  
18 and currently pending would be "rendered useless" by Plaintiff's voluntary dismissal. *See*  
19 *id.*

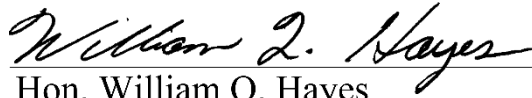
20 Plaintiff has moved for voluntary dismissal at a late stage in these proceedings—  
21 more than two and a half years after the Complaint was filed, and after Plaintiff's  
22 opposition to Defendants' potentially dispositive motion for summary judgment was due.  
23 Defendants have expended significant time and resources litigating this action for more  
24 than two and a half years. Weighing against the imposition of conditions are Plaintiff's  
25 statements regarding his declining health and physical inability to prosecute this action, his  
26 status as a pro se prisoner, and his otherwise active prosecution of this action. The Court  
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1 finds that no conditions to voluntary dismissal without prejudice are necessary in this  
2 matter. Plaintiff's Motion for Voluntary Dismissal Without Prejudice is granted.

3 **V. CONCLUSION**

4 IT IS HEREBY ORDERED that Plaintiff's Motion for Voluntary Dismissal Without  
5 Prejudice (ECF No. 140) is GRANTED. Pursuant to Federal Rule of Civil Procedure  
6 41(a)(2), this action is dismissed without prejudice. The Clerk of the Court shall close this  
7 case.

8 Dated: December 14, 2018

9   
10 Hon. William Q. Hayes  
11 United States District Court  
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